

ARLINGTON SELECT BOARD



HOST COMMUNITY AGREEMENT PROCESS & CRITERIA

I. Statement of Purpose:

The purpose of this policy is to outline the process and criteria by which Host Community Agreements (“HCAs”) will be authorized by the Select Board for existing or prospective marijuana establishments. It is likely that there will be a greater number of applicants than available permits/licenses. Thus, the Board anticipates that selection criteria will determine not only general suitability, but the best fit for Arlington in a competitive market. The Town Manager shall negotiate specific details and execute HCAs consistent with Board findings for approved applicants.

II. Summary of Marijuana Establishment Licensing and Permitting in Arlington

The Select Board holds a limited, but important role as the first step of the lengthy process of licensing, permitting, and opening a marijuana establishment in Arlington. As part of the legalization of adult-use (recreational) marijuana sales, M.G.L. c. 94G sec. 3(d) requires each marijuana establishments (recreational and medical) intending to site within Arlington execute an HCA as a condition of state licensure.¹ While the Town Manager executes contracts and agreements for the Town, the language of c. 94G requires the Select Board’s authorization to enter such agreements with each applicant.

The scope of host agreements varies by community due to differences in municipal structure and where and how local permitting and licensing has been vested in each community. However, all HCAs set forth basic financial impact-mitigation as well as other identified responsibilities of marijuana establishments.

Here, the Arlington Redevelopment Board (“ARB”) and the Board of Health (“BOH”) are the entities primarily responsible for ensuring that marijuana establishments meet zoning standards and requirements (including siting restrictions) and state and local health and safety regulations respectively. Accordingly, some areas which might be addressed in other communities by an HCA will be scrutinized during the special permit and license processes of the ARB and BOH, which will also impose conditions related to the time, place, and manner of marijuana establishment operations.

¹ While the Town and the Massachusetts Patient Foundation/Apotheca entered an HCA for the medical dispensary on Water Street in February of 2016, it should be noted that HCAs were not a required by law at that time.

The overall process of receiving all necessary local and state approvals for a marijuana establishment applicant in Arlington proceeds approximately as follows:

1. HCA authorization, negotiation and execution with the Town;
2. Hosting a community meeting as required by state regulations;
3. Applying to the Cannabis Control Commission (“CCC”) for licensure;
4. Concurrently applying for a special permit to operate a marijuana establishment and operator permit before the ARB and BOH respectively;
5. Obtaining other required approvals – building permits, certificate of occupancy, etc.
6. Final inspections to ensure regulatory compliance by the CCC, Health Department, and Inspectional Services prior to receiving final state licensure.

While applicant-specific circumstances and other factors such as priority certification with the CCC for registered marijuana dispensaries could slow or accelerate successful applicants’ timelines to opening, it is likely that the series of licenses and permits required for operation would take at least 9 to 12 months from the date of HCA execution.

III. Authority & Legal Considerations

A. **Select Board Authority Under c. 94G sec. 3(d)**

The Select Board’s authority and scope of consideration for HCAs are set forth in c. 94G sec. 3(d) which reads as follows:

*“A marijuana establishment or a medical marijuana treatment center seeking to operate or continue to operate in a municipality which permits such operation shall execute an agreement with the host community setting forth the conditions to have a marijuana establishment or medical marijuana treatment center located within **the host community which shall include, but not be limited to, all stipulations of responsibilities between the host community and the marijuana establishment or a medical marijuana treatment center.** An agreement between a marijuana establishment or a medical marijuana treatment center and a host community may include a community impact fee for the host community; provided, however, that the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center and shall not amount to more than 3 percent of the gross sales of the marijuana establishment or medical marijuana treatment center or be effective for longer than 5 years. Any cost to a city or town imposed by the operation of a Marijuana Establishment or medical marijuana treatment center shall be documented and considered a public record as defined by clause Twenty-sixth of section 7 of chapter 4.”*

(emphasis added).

The CCC interprets c. 94G narrowly, noting that HCAs are intended to complement the substantial framework of 935 CMR 500², which regulates many issues of concern over retail marijuana establishments on a statewide level. Those regulations control many facets of the types of signage allowed for marijuana establishments, require criminal history background checks, prohibit delivery of recreational marijuana, and establish quality control measures such as a “seed-to-sale” tracking system.³

According to the CCC, examples of policy-oriented stipulations and conditions which may be set forth in an HCA include:

- Relocation notice, terms and requirements;
- Prioritizing local residents for jobs created at the establishment;
- Termination conditions and/or requirements for ceasing to operate, or relocating outside of the municipality;
- Security system minimum requirements for accessing the establishment and marijuana inventories;
- Providing police details for the purposes of traffic and crowd management during peak hours of operation;
- Obligations of municipalities to submit requested and required information to the CCC;
- Provision for cooperation on municipality-sponsored public health and drug abuse prevention educational programs; and
- Agreement for cooperation with community support, public outreach and employee outreach programs between the municipality and the establishment.

See e.g., CCC Guidance on Host Community Agreements.

With respect to financial terms of HCAs, both the law and the CCC cap financial arrangements at a community impact fee of 3% of gross revenue of total sales for any establishments.⁴ Communities may agree to less, but not more.

B. Arlington Zoning Bylaw & ARB Review

While the Select Board may authorize some terms and conditions of operating a marijuana establishment through an HCA, it is important to do so within the context of the Arlington Zoning Bylaw marijuana regulations. As approved on December 5, 2018, the Arlington Zoning Bylaw sections 3.4, 5.5 and 8.3 govern the siting and operation of marijuana establishments. Marijuana establishments may only be sited in those districts allowing them

² A full copy of the CCC’s 37-pages of regulations on adult-use and medical marijuana establishments can be found here: <https://www.mass.gov/files/documents/2018/03/27/935cmr500.pdf>

³ Moreover, as noted above, Arlington’s BOH has incorporated the State’s marijuana regulations and enhanced them where permissible and harmonious with state law.

⁴ Some communities and establishments have negotiated terms which applicants allege exceed such limits by requiring donations to certain non-profit entities or like financial commitments. I respectfully advise against the inclusion of such terms as indeed some of those same communities are presently facing or may soon face litigation by unsuccessful applicants on the basis that competitors agreed to terms not authorized by c. 94G sec. 3(d).

(B2A, B3, B4, B5, and Industrial districts). In order to attain a special permit in any such district, applicants must further comply with “environmental design review” (“EDR”) standards.

The purpose of EDR is “to provide individual detailed review of certain uses and structures that have a substantial impact on the character of the town and on traffic, utilities, and property values, thereby affecting the public health, safety and general welfare.” Zoning Bylaw Sec. 3.4.1. The twelve (12) criteria of EDR are:

- Preservation of Landscape;
- Relation of Buildings to Environment;
- Open Space;
- Circulation;
- Surface Water Drainage;
- Utility Service;
- Advertising Features;
- Special Features;
- Safety;
- Heritage;
- Microclimate; and
- Sustainable Building and Site Design.

Furthermore, marijuana establishments are also subject to special regulations set forth in section 8.3. *See*, Attachment “B,” Zoning Bylaw Section 8.3. Most germane to the Select Board’s consideration, the Zoning Bylaw limits the number of special permits for marijuana establishment to a total of three (3), and prohibits placement of such establishments within the following “buffer zones”:

- 500 feet of K-12 schools;
- 300 feet of Town playgrounds and recreational facilities;
- 200 feet of Town libraries; and
- 2,000 feet of another like marijuana establishment of the same kind.⁵

C. Board of Health Licensing & Enforcement

Finally, the Board of Health has promulgated its “Regulation to Ensure the Sanitary and Safe Operation of Adult-Use Marijuana Establishments and the Sale of Adult-Use Marijuana,” which addresses a broad range of operational and product safety subjects including how products are displayed within stores and what kind of products can be sold. Specific prohibitions include self-service displays, “out-of-package” and/or “roll-your-own” sales, and product vending machines. *See* Attachment “C” BOH Regulations. Additional requirements include annual community meetings to hear abutter feedback, and requiring surety bonds to cover Town costs in the event of unanticipated closure. These regulations also incorporate the 900 CMR 500 (the

⁵ i.e. no recreational establishment within 2,000 feet of another recreational establishment or no medical dispensary within 2,000 feet of another medical dispensary.

CCC's regulations) in order to assure consistency, continuity, and maximum enforcement authority for Health Department agents and the BOH.

IV. Select Board HCA Selection Process, Criteria and Minimum HCA Terms

Neither CCC guidance materials nor the regulations of 935 CMR 500 provide a specific process for vetting HCA applicants, especially where the limited number of special permits/licenses practically require awarding an HCA to some applicants and not others. Based upon the foregoing outline of the authorities and responsibilities, public feedback, as well as the Board's past practice to competitively select recipients for package store licenses from a pool of applicants, the Select Board adopts the following, process criteria, and minimum HCA terms and conditions set forth below:

A. Process

1. HCA Application & Preliminary Review

Applicants will provide a complete HCA application to the Select Board Office, including but not limited to:

- a. Detailed business information, including identifying the type of business, the management team, and the names of all partners or managers with an ownership stake greater than 10%.
- b. Narrative response to an "Operating Questionnaire" designed to provide applicants the opportunity to highlight how they will meet the selection criteria approved by the Board (set forth in section C below: Selection Criteria).
- c. Regulatory compliance information, including detailing the license status of any marijuana license held throughout the Commonwealth, any violations of state or local rules and regulations within the last three (3) years relative to marijuana establishments or any Arlington bylaws, rules, or regulations;
- d. Supporting Materials, including the following:
 - A business plan;
 - A preliminary security plan;
 - A preliminary traffic and parking management plan;⁶
 - Evidence of site control; and
 - Certification of Zoning Compliance.⁷

⁶ The Select Board does not require a full and finalized traffic study or security plan given that the EDR Process as well as BOH regulations will heavily examine

⁷ As noted above, the Zoning Bylaw allows for marijuana establishments by special permit only in certain districts, and further establishes a variety of buffer zones where establishments may not be sited without further relief from the ARB. The ARB may grant an exception to buffer zones as provided in Zoning Bylaw sec. 8.3(b)(2). However,

- e. Proposed HCA with all minimum terms and conditions included; and
- f. Priority application status.

A Preliminary Review Team (“PRT”) consisting of the Chief of Police, the Health Director, the Planning Director, the Building Inspector, the Town Counsel, and the Town Manager or their respective designees shall review applications for completeness and provide the Board with comments, objections to applicants, or further questions for the applicants in advance of presentations to the Select Board.

The Marijuana Study Group shall also review applications to present their questions, concerns, and comments to the Select Board in advance of application presentations.

An application fee of \$250 shall also be provided to the Select Board Office.

2. Presentations before the Select Board

Following PRT and Marijuana Study Group preliminary review, applicants will be invited to make a 20 minute presentation to the Select Board, further addressing the HCA Selection Criteria, their proposed HCA, and other information they wish to emphasize to the Board and the public.

B. Selection Criteria

The Board will consider the following criteria as probative of the quality of applicants experience and plan for operating in Arlington:

- a. Completeness and quality of application;
- b. Demonstrated direct experience in the cannabis industry or a similar industry, such sensitive retail and related commercial uses – package stores, establishments with other types of alcohol licenses or age-restricted products;
- c. Relevant business experience in Arlington;
- d. Relevant business experience in the Commonwealth of Massachusetts;
- e. A sound preliminary business plan which evidences applicants’ financial resources, proposed scale of operation, inventory sources and plans for inventory management, as well as anticipated costs and revenues;
- f. A strong employee training process and plan to ensure regulatory compliance;

given the likely competition for licenses, all applicants for HCAs should demonstrate site control in one of the zoned districts for marijuana establishments as well as siting outside a buffer zone *or* substantial evidence that an exception is feasible due to site specific conditions.

- g. A sound preliminary security plan including inventory;
- h. A sound preliminary traffic and parking plan demonstrating basic feasibility of the site and/or intended traffic and parking mitigation measures;
- i. For adult-use applicants, intention to co-locate Registered Marijuana Dispensary operations to ensure access to Arlington medical marijuana patients;
- j. Commitment to youth safety, abuse prevention, and community education;
- k. Commitment to diversity and local hiring; and
- l. Maintenance of geographic balance in the distribution of marijuana establishments.⁸

The aforementioned criteria are not exhaustive, nor are any single criteria determinative. The Board shall also weigh any objections, concerns, or comments of the PRT. Applicants are encouraged to inform the Board of unique qualifications they may possess.

****Applicants should take note that to the extent the criteria overlap with those which would be applied during ARB or BOH permit and license reviews, applicants are advised that the grant of an HCA by the Select Board shall not be considered as evidence of appropriateness in such processes.*

C. Minimum HCA Terms & Conditions

Applicants are invited to provide their own HCA proposals with the following minimum requirements and restrictions:

- 1. A Community Impact Fee equal to 3.0% of the establishment's gross sales;
- 2. Annual filing of financial statements with the Town;
- 3. Provision of financial reporting records required by the CCC to the Town within a reasonable timeframe;
- 4. Maintenance of books and other financial records pertaining to the requirements of the HCA consistent with accounting standards and guidelines of the CCC;
- 5. Commitment to hiring local, qualified employees, and diverse employees to the extent consistent with the law;
- 6. Commitment to hiring local vendors, suppliers, and contractors from diverse businesses to the extent permitted by law;
- 7. Commitment to participation in youth health, safety, and prevention programs;

⁸ Applicants are advised that the Select Board will prioritize an even geographic distribution of Marijuana Establishments consistent with its treatment of Package Store licenses.

8. Cooperation with the Arlington Police Department to ensure effective security, including periodic meetings to review of security protocols and agreement on the placement of exterior security cameras and devices; and
9. If applicable, commitment to cooperate with the Town to prevent Hardship Cultivation Registration for medical marijuana patients;

In light of the CCC's Guidance, the Select Board will not accept additional financial incentives or payments to private entities as a condition of HCAs.

V. HCA Application Deadlines and Decisions

A. Application Timeline

- The first round of applications must be submitted by no later than ***12 p.m. Friday, May 3rd***
- The PRT and Marijuana Study Group will conduct parallel preliminary review of applications and submit their comments and questions to the Select Board;
- Applicant presentations shall be made ***Monday, May 20th***⁹

B. Application Decisions

The Select Board endeavors to make determinations on HCA applications in an efficient and transparent manner, mindful that successful applicants for an HCA will be scrutinized in detailed fashion during the lengthier state licensure, special permit, and BOH licensure processes. The Board will not formally score applications, nor will it issue written decisions.

The Board must determine which applications will be approved in an open, public meeting. If equipped with sufficient information, the Board endeavors to vote after hearing all applicant presentations with time for Board questions. In the event the Board requires additional time, applicants will be so advised.

⁹ Time and date are subject to change depending in part on Arlington's Annual Town Meeting schedule and Select Board scheduling.